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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Forty-fourth session
Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Draft resolution submitted by Mr. Bossuyt, Mr. Boutkevitch, Ms. Chavez, Mr. Chernichenko, Mr. Eide, Mrs. Forero Ucros, Mr. Guissé, Mr. Hakim, Mr. Hatano, Mr. Joinet, Mr. Khalil, Mrs. Ksentini, Mr. Maxim, Mrs. Palley, Mr. Saboia, Mr. Sachar, Mrs. Warzazi and Mr. Yimer

1992/... Question of human rights and states of emergency

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolution 1983/18 of 22 February 1983, in which the Commission requested the Sub-Commission to give further consideration to the study on the implications for human rights of situations known as states of siege or emergency, submitted by the Special Rapporteur, Mrs. Nicole Questiaux (E/CN.4/Sub.2/1982/15),

Recalling that in the same resolution the Commission requested the Sub-Commission to propose measures designed to ensure the respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency existed, especially of the rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights, which prohibits derogation from certain rights even in time of public emergency,

Recalling Economic and Social Council resolution 1985/37 of 30 May 1985 and Sub-Commission resolution 1983/28 of 6 September 1983 concerning the question of human rights and states of emergency,

Recalling that in its resolution 1985/32 of 30 August 1985 it requested the Special Rapporteur, Mr. Leandro Despouy, to draw up and update a list of countries which proclaimed or terminated a state of emergency each year and to prepare an annual report containing reliably attested information on compliance with the rules, national and international, guaranteeing the legality of the introduction of a state of emergency,

Recalling Commission on Human Rights resolution 1991/34 of 5 March 1991, in which the Commission, inter alia, invited the Sub-Commission to consider the question of the effectiveness of habeas corpus and similar remedies during states of emergency and to formulate suggestions thereon,

Having noted, at its thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third and forty-fourth sessions, the importance for the effective enjoyment of human rights of the principles concerning respect for the rules, national and international, guaranteeing the legality of the introduction of a state of emergency,

Noting the interest expressed by many countries in receiving technical assistance from the Special Rapporteur on states of emergency and the United Nations Secretariat under the programme of advisory services in the field of human rights, and the work already done by the Special Rapporteur in this field,

Noting also the need to strengthen the observance of all non-derogable human rights, as well as the legal guarantees enabling a remedy to be sought from the competent authorities,

Noting further that in some circumstances, such as situations of war, armed conflict or internal unrest, emergency measures are adopted without a state of emergency being officially proclaimed and that such measures have an impact on human rights which warrants thorough study by the Special Rapporteur,

Noting with satisfaction the growing cooperation of Governments with the Special Rapporteur and the need to continue to analyse the information received by the Special Rapporteur with the greatest care,

Stressing the importance for the Special Rapporteur of using all reliable information for updating his annual reports, including the information which is available in relevant databases,

1. Expresses its deep appreciation to the Special Rapporteur, Mr. Leandro Despouy, for his fifth annual report and the list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency (E/CN.4/Sub.2/1992/23);

2. Also expresses its appreciation to Governments, competent United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, as well as competent university and academic institutions, that have submitted information and comments on the question of human rights and states of emergency, and invites them to continue to cooperate actively with the Special Rapporteur;

3. Recognizes the fundamental importance of the existence in each country of specific and effective national legislation enabling emergency situations to be dealt with in conformity with international norms and invites Governments that have not yet done so to consider the adoption of internal legislation consistent with the requirements of international instruments concerning states of emergency, as explained and developed in the Special Rapporteur's various reports;

4. Invites Governments to limit the introduction of states of emergency, particularly in the case of internal unrest, exclusively to situations sufficiently serious and exceptional to justify them, in order to avoid making the use of states of emergency commonplace and thus, possibly, perpetuating them;

5. Endorses the request of the Special Rapporteur (E/CN.4/Sub.2/1992/23, para. 22) to recommend that the Commission on Human Rights should propose the inclusion in the agenda of the forthcoming World Conference on Human Rights of an item entitled "Strengthening of protection of human rights during states of emergency";

6. Requests the Secretary-General, under the United Nations programme of advisory services in the field of human rights, to furnish assistance through the Special Rapporteur to States requesting it;

7. Invites the Special Rapporteur to continue the work with which he has been entrusted and to submit to the Sub-Commission, at its forty-fifth session, the next annual report and list updated on the basis of the information received and to update his present report so that the Commission on Human Rights, at its forty-ninth session, will have before it the most recent and accurate information available;

8. Also invites the Special Rapporteur to continue his work on the draft guidelines for the development of legislation on states of emergency and, in particular, to examine the question of non-derogable rights;

9. Further invites the Special Rapporteur to continue and expand his contacts and to hold consultations with appropriate technical institutions and experts with a view to receiving, storing and retrieving information relating to matters relevant to his mandate;

10. Requests the Secretary-General to provide the Special Rapporteur with all the assistance he may require to carry out his work successfully and, in particular, to process the information submitted to him in an effective way;

11. Decides to examine the updated report and list transmitted by the Special Rapporteur as a matter of priority under agenda item 10 (b), entitled "Question of human rights and states of emergency";

12. Recommends the following draft decision to the Commission on Human Rights for adoption:

The Commission on Human Rights,

Noting resolution 1992/... of ... August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. Recommends the inclusion in the agenda of the forthcoming World Conference on Human Rights of an item entitled "Strengthening of protection of human rights during states of emergency";

2. Recommends the following draft decision to the Economic and Social Council for adoption:

The Economic and Social Council, taking note of Commission on Human Rights decision 1993/... of ... February 1993 and of resolution 1992/... of ... August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the request by the Sub-Commission: (a) to Mr. Leandro Despouy, Special Rapporteur on human rights and states of emergency, to continue to update the list of states of emergency and to include in his annual report to the Sub-Commission and the Commission recommendations on inalienable or non-derogable rights, and (b) to the Secretary-General to provide the Special Rapporteur with all the assistance he may require to carry out his work, to maintain cooperation with the different sources of information and databases, and to process the information submitted to him in an effective way.